

the lessor is an individual, a letter incorporating a Notice of Termination and a Release Clause will be sent. The letter will substantially follow the form shown in Figure 11-16 in ER 405-1-12. Distribution of releases will be accomplished in the same manner as set forth in § 644.460.

(b) *Qualified Release.* In case the lessor declines to sign an unqualified release, he should be requested to execute an appropriate release subject to exceptions. The exceptions may be enumerated on the reverse side of the form.

§ 644.459 Preparation of supplemental agreements effecting settlement.

The terms of settlement in lieu of restoration, negotiated with the lessor, will be embodied in a supplemental agreement to the lease, antedating termination, substantially in accordance with ENG Form 341, Supplemental Agreement Transferring Improvements to Lessor. Supplemental agreements may be used to effect restoration settlements of obligations incurred under permits, trespass right agreements, and other unnumbered contracts for the temporary use of land. Restoration settlements may also be effected even though the premises were occupied rent free and without formal contract, provided use of the premises was authorized properly by the Government (Decision of the Comptroller General B-63340, February 1947). Care should be exercised in determining the existence and extent of the legal obligation of the Government to restore. Payment will not be made for doubtful items; instead, the other party to the agreement will be advised of his right to submit a claim. On the other hand, every effort will be made to agree upon a reasonable settlement as to items for which the Government is legally responsible.

§ 644.460 Supplemental agreement assembly.

(a) *Composition.* Supplemental agreement assembly, covering agreement for settlement in lieu of restoration, will be composed of the following:

- (1) Completed Notice of Termination.
- (2) ENG Form 340 (Supplemental Agreement Accepting Proposed Res-

toration) or ENG Form 341 (Supplemental Agreement Transferring Improvements to Lessor).

(3) Lessor's notice requiring restoration, unless the lessor has signified that restoration is not required.

(4) Joint terminal survey and condition report.

(5) ENG Form 1440-R, or 1440A-R and 1440B-R.

(6) Estimated cost of restoration of leased personal property if not otherwise included.

(7) Statement of cost of any restoration actually performed by the Government.

(b) *Distribution.* An executed copy of the assembly will be retained by the DE. An executed copy of the supplemental agreement will be furnished the lessor. Conformed copies will be transmitted to the major command, the installation commander and, when monetary consideration is involved, to the appropriate finance and accounting office.

§ 644.461 Payment for restoration or settlement in lieu of restoration.

Voucher forms, appropriate to the circumstances, will be used in making payment of the settlement. Reference should be made on the voucher to the lease and supplemental agreement. The cost of restoration work performed directly by the Government, or by contract, or compensation in any settlement agreement in lieu of restoration, will be paid from funds available for the payment of rental. The limitations of section 322 of the Economy Act of 1932, as amended (40 U.S.C. 278a and b), on the expenditure of funds for the alteration, improvement, or repair of leased premises to 25 percent of rent for the first year, are not applicable to costs of performing restoration work pursuant to obligations of the lease nor for payments of settlements in lieu thereof (20 Comp. Gen. 105).

§ 644.462 Performance of restoration work by district engineer—extension of time.

Where the lessor will not accept a cash settlement in lieu of restoration, or desires the work to be done by the Government, the restoration will be performed, without delay, directly or